MASTER
NEGATIVE
NO. 91-80229-3

AUTHOR:

O'CONNELL, DANIEL

TITLE:

A LETTER TO THE MEMBERS OF THE...

PLACE:

LONDON

DATE:

1829

Master Negative #

91-80229-3

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DEPARTMENT

BIBLIOGRAPHIC MICROFORM TARGET

Original Material as Filmed - Existing Bibliographic Record

936.420' Connell, Daniel. 1775-1847.
Z2 Letter to the members of the House of commons... on the legal right of Roman catholics to sit in Parliament...
London 1829 O. 32p.

No. 3 of a volume of pamphlets.

Restrictions on Use:

TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 1/x
IMAGE PLACEMENT: IA (IIA) IB IIB
DATE FILMED: 9.11.91 INITIALS V.W.D.
FILMED BY: RESEARCH PUBLICATIONS, INC WOODBRIDGE, CT

AIIM

Association for Information and Image Management

1100 Wayne Avenue, Suite 1100
Silver Spring, Maryland 20910

301/587-8202

Centimeter

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 mm

1 2 3 4 5

Inches

1.0 1.1 1.25 1.4 1.6 1.8 2.0 2.2 2.5 2.8 3.2 3.6 4.0 4.5 5.0 5.6 6.3

MANUFACTURED TO AIIM STANDARDS
BY APPLIED IMAGE, INC.

A

LETTER

TO

THE MEMBERS

OF THE

HOUSE OF COMMONS

OF THE

UNITED PARLIAMENT OF GREAT BRITAIN AND IRELAND,

&c. &c. &c.

GUNNELL AND SHEARMAN, SALISBURY SQUARE.

A LETTER

TO

THE MEMBERS

OF THE

HOUSE OF COMMONS

OF THE

UNITED PARLIAMENT OF GREAT BRITAIN AND IRELAND,

ON THE LEGAL RIGHT OF

Roman Catholics to Sit in Parliament;

TO WHICH IS ADDED

A REPLY

TO

EDWARD BURTENSHAW SUGDEN, Esq.,

ONE OF HIS MAJESTY'S COUNSEL, &c. &c. &c.

BY

DANIEL O'CONNELL, ESQ., M.P.

LONDON:

JAMES RIDGWAY, 169, PICCADILLY.

MDCCCXXIX.

LETTERS,

&c.

"Quid enim ultra fieri ad placandos Deos, mitigandosque homines, potuit, quam quod *nos* fecimus? Qui finis erit discordiarum? Ecquando *unam urbem* habere, ecquando *communem hanc esse patriam*, licebit? victi *nos* æquiore animo quiescimus quam *vos* victores."—*Liv.*

Merrion Square, Dublin, Feb. 2, 1829.

GENTLEMEN,—IT will be readily admitted that the question upon my right to take my seat and exercise all the duties of a member of the House of Commons is one of great importance to the people of these countries.

If the decision shall be, as I am satisfied it ought to be, in favour of that right, it will tend to tranquillize Ireland and strengthen Great Britain. If it shall happen that I am unjustly and illegally deprived of that right, the consequences cannot but be pernicious, and may be most disastrous.

I am a lawyer of thirty years' standing. Experience alone ought to have taught me something of the law; and here I deliberately assert my most sincere conviction of my right to sit, speak, and vote in Parliament, without taking any oath inconsistent with the Catholic religion. I think I shall convince every lawyer in the country, who is not biassed by political or other motives, that my right to sit, speak, and vote in the House of Commons, is perfectly clear and incontrovertible.

I trust, too, I shall be able to carry the same conviction home to the minds of every one of you; but as very many of you are not lawyers, I will use as little technical language as possible, and divide the subject into separate and distinct propositions, in order to avoid confusion or intricacy.

My first proposition is, that it is a maxim both of constitutional and judicial law, " that penal and restrictive statutes are to be construed strictly, and not to be extended by implication beyond the words thereof."

This is a universal rule, founded on plain common sense. The law would create a miserable servitude if it were otherwise. Men should have distinct and accurate information of that which the law constitutes an offence, or defines to be a crime; and men should also have distinct and accurate information given by the law itself, and not by any interpreter, of the nature, quantity, and quality of the punishment or penalty to be incurred by the commission of such offence or crime.

This principle of common sense has been fully and unequivocally adopted by the British law. Our Judges, in one thousand instances on record, have not only asserted the principle that penal and restrictive laws are to be construed most strictly, and not to be extended by implication, but have boasted of the adoption of this principle, as one decisive evidence of the perfect conformity of British law with common sense and natural justice.

I am tempted by my forensic habits to cite authorities, and to refer to the dicta of great and eminent Judges, as proofs of the extent to which this principle has been adopted, asserted, and lauded by our Judges in every century, modern as well as remote. But I refrain. I am addressing men who are not professional lawyers; and it is enough for them to know, that this maxim of common sense is also a maxim of common law, that penal or restrictive statutes are to be construed strictly.

It was declared in the reign of Edward VI., " that there is a principle in the common law, that penal statutes should be taken strictly, and shall not be extended by equity to the prejudice of them upon whom the penalty is inflicted."

You can, therefore, easily comprehend that no tribunal, nor any authority whatsoever—save the Legislature—can add " words" to complete a supposed or implied intention of the Legislature in a penal statute.

That would be to legislate, not to expound; that would

be to place the judicial over the legislative power, and in a penal matter too.

The law is particularly strict on this subject, as indeed it ought to be.

It is so strict, that even when the Legislature in a penal statute uses words of a doubtful nature, the Judges have laid it down as a rule, " that doubtful words shall never be construed to the prejudice of a supposed offender."

Perhaps I shall be deemed improperly prolix on this introductory part of my case; but it is absolutely necessary that this rule and maxim of the law should be distinctly understood—" that penal laws are to be construed strictly, and are never to be extended by implication." It is so important that this matter of law should be understood, that I am induced to mention another rule laid down by the Judges, as resulting from the maxim of construing penal statutes strictly: it is this—" That affirmative words in an Act of Parliament never take away a common law right."

This rule may be quoted in many ancient authorities, and is not inaptly illustrated by what Lord Eldon, presiding in the House of Lords, is reported to have said in the case of the corporation of Galway.

An Irish Act of Parliament had enacted that " the freemen of Galway should reside in that town." Persons, not resident, have claimed the rights of freemen of Galway. The question on this point was, whether constant and undoubted non-residence disentitled them to claim these rights?

Lord Eldon is reported to have declared that it did not; that the statute was merely affirmative, directing the freemen to reside in the town, and only implying that none should be freemen but those who so resided. However, such implication could not be allowed to destroy the rights of the non-residents. It was a penal statute, and therefore would have required negative words to take away the subject's rights.

This law, reported to have been laid down by Lord Eldon, will be admitted by every well-informed lawyer to be perfectly accurate.

To deprive the subjects otherwise entitled to the freedom of the corporation of Galway of that right, it would have been absolutely necessary that the statute should have contained not only an enactment "that all freemen should reside in Galway," but it should have added, "that no persons who did not reside in Galway should enjoy the rights of freemen of that town."

I now beg of you, in considering the case I shall lay before you on my own behalf, to carry in your minds these truths—

1. That penal and restrictive statutes are to be construed strictly.

2. That penal and restrictive statutes cannot be extended by construction or implication.

3. That no tribunal can add "words" to any penal or restrictive statute.

4. That the doubtful words of a penal or restrictive statute are to be construed in favour of the supposed offender.

5. That affirmative words in an Act of Parliament do not take away a common law right.

And, 6, That the right of the elected representative of a county to sit and vote in Parliament is a common law right of the highest nature.

These are truisms familiar to those whose profession has initiated them in legal details; and I state them only because this letter is addressed to gentlemen whose habits and pursuits render it necessary to rouse their attention to the principles which ought to govern any legal decision in my case.

If these principles are kept steadily in view, my case will be found to be one which cannot create any doubt or difficulty.

I now proceed to consider the present state of the statute law relative to the oaths necessary to be taken by members of the House of Commons. You will recollect that I assert my right to sit and vote in that House, without taking any oaths inconsistent with the Catholic religion.

I shall say nothing with respect to the oaths of allegiance and abjuration. I have taken both these oaths frequently.

I am ready to take them as often as any justifiable occasion requires me to swear. No man is more ready than I am to pay due allegiance to the Sovereign, or to maintain the title of his family to the throne of this realm. No man more thoroughly abjures, than I do, any foreign Prince, Potentate, Pope, or Prelate, in all temporal or civil affairs.

The oaths of allegiance and abjuration being thus out of the question, I proceed to my second proposition. It is this:—

"That I am entitled to go into the House of Commons, and to take my seat without taking any oaths inconsistent with the Catholic religion, out of the House itself."

It has been asserted, and repeated in print, that it is necessary to take the oaths of allegiance and supremacy in the Lord Steward's office, previous to entering the House of Commons. I deny that any such obligation exists: it is quite true that it did exist, but it exists no longer.

The obligation to take these oaths was created by the stat. 5th Elizabeth, cap. 1, sec. 16, and 7th James I., cap. 6, sec. 8. But mark, besides other objections, both those statutes, as far as they relate to oaths of allegiance and supremacy, are repealed by the express words of the statute 1st William and Mary.

I defy any lawyer to controvert this statement by pointing out any statute now of force, requiring a member of the House of Commons to take the oath of supremacy before the Lord Steward or his Deputy, prior to his entering the House.

This brings me into the body of the House, and here I have a third proposition to adduce and prove. Before I do so, let me make two observations.

The first is, that even if the statutes of he 5th Elizabeth, and 7th James I., above cited, had not been repealed, yet I could successfully contend that they were rendered inoperative by the act of Union between Great Britain and Ireland.

The second is, that the oath of supremacy, in the 5th Elizabeth, is an affirmative oath, asserting that the Sovereign

is the head of the church—an oath which Dissenters and Presbyterians equally reject with Catholics.

I now come to the third proposition—it is this: "That I incur no penalty, privation, or forfeiture, by sitting, speaking, and voting, in the House without taking the oath of supremacy, or making the solemn declaration against transubstantiation in the House itself."

This is the main point in the case: if I prove this proposition, I establish my right incontrovertibly.

It is plain that here I am called on to prove a negative.—But I am prepared to do so. I will raise the objections to my sitting and voting fairly, and I intend to solve them completely.

The statutes which require oaths and declarations to be taken and made are these—the 30th Charles II., sec. 2, cap. 1, and 1st William and Mary, cap. 1.

The first of these statutes was enacted under the influence of that fanatic folly and barbarity which disgraced that period of English history, by the countenance given to the sanguinary fable called *Titus Oates's Plot*.

By the second section, that statute required every member of the House of Commons to take the oaths of allegiance and supremacy, and to make the declaration that here is no transubstantiation in the elements after consecration; and that the sacrifice of the mass, and the invocation of the saints, as used in the Church of Rome, are impious and idolatrous.

The third section provides a tribunal before which these oaths are to be taken—namely, the House of Commons, with the Speaker in the chair.

The fourth section enacts disabilities, penalties, and forfeitures of a most grievous nature; disability to hold any office or place of trust, civil or military, under the crown; disability from thenceforth to sit or vote in either House of Parliament; disability to sue as plaintiff in any court of law or equity; disability to be guardian of any child; disability to be executor or administrator to any person, or to take any legacy or deed of gift, and also a forfeiture of 500*l.* to be recovered by any common informer.

The seventh section directs in the event of any member of the House of Commons refusing to take these oaths that a new writ should issue to return a new member in the place of such defaulter.

Thus the plan of enforcing these horrible oaths was complete—it consisted of these particulars:—

1st. It directed every member of the House of Commons to take these oaths previous to sitting or voting.

2d. It framed a tribunal to administer the oaths.

3d. It created a disability to continue a member of the House in case of refusal to take these oaths before that tribunal. And,

4th. It provided a remedy by authorizing the Speaker to issue a new writ, in case these oaths were not taken before that tribunal.

Now, whilst we are upon this statute, let me implore your deliberate attention to the following train of thought:—Suppose, for one moment, that the statute of the 30th of Charles II., which I have just analyzed, had contained only the first of the four preceding clauses, and even only part of that; suppose it merely directed the oaths to be taken by the members of the House of Commons, without limiting any time within which the oath should be taken, and that it did not frame any tribunal, or create any authority to administer the oath, and that it did not create any disability, forfeiture, or penalty, for refusing or declining to take that oath, and that it provided no remedy in the event of such refusal. Suppose all these things, and see whether the following propositions do not inevitably result:—

1st. That every member would have the entire Parliament to comply with the injunction of the statute.

2d. That the House of Commons would not have any jurisdiction to administer the oath, and could not administer it. The House has no inherent jurisdiction to administer an oath.

3d. That the House of Commons could not punish any man for not taking that oath. The House of Commons is not a court of criminal jurisprudence, nor indeed any court of justice at all.

4th. That the House of Commons would not have any remedy in its power or jurisdiction in the event of a neglect to take the oath.

I think I may say with great confidence, and I do say it with perfect confidence, that there is not a lawyer in the British dominions, whose opinion can have weight, that will controvert any of the four propositions I have thus laid down.

If such a one be found, let him not overlay the subject with words, or deviate into extrinsic topics, but let him come to the point directly,—let him sustain his opinion by any reasoning he can, and allow me to anticipate his certain defeat.

Now, any one of these propositions conceded to me, decides the entire question in my favour.

I believe there is not one human being in existence acquainted with the principles and spirit of our laws, so devoid of intellect as to assert that the statute of the 30th Charles II., if it contained a mere direction to take the oaths, would have been equally potential as a law as it was when it limited the time for taking the oath, framed a tribunal to administer the oath, enacted penalties and disabilities for not taking the oath, and provided the remedy in the event of a refusal to take the oath.

Yet if this be not practically effected, which could not, with decency, be asserted, my right to sit, speak, and vote, unimpeded by any decision of that House, is perfectly clear, as I shall presently demonstrate.

I return to the second of the statutes I have above cited, as requiring oaths to be taken within the House of Commons, the 1st of William and Mary, cap. 1.

The third section of that statute adopts, by a distinct reference, in terms, the declaration contained in the 30th of Charles II., and it substitutes a new oath of supremacy in the place of the former oath of supremacy, which is repealed by the second section.

The former oaths of supremacy asserted positively that the King was the head of the church—the new oath of supremacy, contained in the 1st of William and Mary, cap. 1,

and repeated, *totidem verbis*, in the 1st of William and Mary, cap. 8, is merely negative. It denies to any foreign power or prelate any spiritual jurisdiction. The Protestant Dissenters, Presbyterians, &c., could not take the first; all Protestants and even infidels could take the second.

The 3d section of the 1st of William and Mary, cap. 1, enacts, that this second or new oath of supremacy, with the declaration contained in the 30th Charles II., shall be taken and made by every Member of Parliament, within the time, and in the same manner and form, and under the penalties and disabilities as by that act are ordained, and not at any other time or in any other manner. These concluding words are very important.

That the 30th of Charles II. was embodied by express enactment with the 1st of William and Mary, with this exception, that the oath of supremacy was altered.

And thus by means of these two statutes it is conceded that from the commencement of the reign of William and Mary, to the Union between England and Scotland, any member of the House of Commons who refused to take the oaths within the House, incurred various disabilities of the most grievous nature, and amongst them he forfeited his seat. His refusal before becoming a member to take the oaths did not, and could not, disqualify him from being elected. He was eligible, but he incurred the forfeiture of his seat, by the act of refusing to take the oaths, he being then an elected member of the House.

Such was the state of the law with respect to the Parliament of England. It was the English Parliament until the union with Scotland, when it became the British Parliament. It by that means became another and a different body, insomuch so that a mere majority of English representatives could no longer pass a bill, even one relating to England, if opposed by the Scotch members. It became a new body, in which England could legislate for Scotland, and Scotland shared the legislation of England.

This new body, the British Parliament, could not be bound by any statute relating exclusively to the former body, the English Parliament. The 30th of Charles II.,

and the 1st of William and Mary, would, as a matter of course, have been altogether inapplicable to the British Parliament. This was, of course, foreseen, and accordingly provided against.

The 22d article of the union between England and Scotland made the requisite provision in that behalf. See 5th and 6th Anne, cap. 8.

It is of vital importance to the understanding of this matter that the 22d article of the union with Scotland should be kept in view. The provisions of that article are these:—

1st. It regulates the number of Scotch peers—namely, 16.

2d. It regulates the number of Scotch members of the House of Commons—namely, 45.

3d. It regulates the time and manner of meeting of the first Parliament of Great Britain. And,

4th. It prescribes the oaths to be taken by all the members of the British Parliament. Thus—

It recited expressly, and by titles and dates, the 30th of Charles II., the 1st of William and Mary, caps. 1 and 8; and it directed that, until the Parliament of Great Britain should otherwise direct, all the Members of the British Parliament should take the oaths and make the declaration mentioned in these acts (mark what follows), at such time, and in such manner, as the members of the English Parliament were, by those enumerated acts, directed to take them, upon the penalties and disabilities in the said respective acts contained.

Thus the 30th Charles II. and the 1st William and Mary were embodied in the Legislative Union with Scotland; not in part merely, but in all their details. The Scotch Union did not merely adopt the oaths mentioned in these acts, but it also adopted the time and manner of taking them, and expressly enacted the penalties and disabilities for not taking them. It follows, therefore, that the taking of the oaths was as necessary in the British Parliament as it was in the English Parliament; and that the same penalties and disabilities would be incurred by the not taking of these oaths. But why does it so follow? Simply because it was expressly and in terms enacted that it should be so.

The British Parliament was thus bound by positive enactments; the law was express and clear during all the period that intervened between the Scotch and Irish Union. During all that period, any member who refused to take the oaths in the House incurred a forfeiture of his seat. It was not (as I have said before of the English Parliament) that the law created *à priori* an ineligibility, but that a disability to retain the seat was created by the refusal to take the oaths.

So stood the law of Parliament until the Irish Union.

It being admitted that it was necessary, in order to retain a seat in the British Parliament, to take the oaths within the House, now it is idle to cite, as Lord Colchester has done, cases that occurred during the continuance of that Parliament, as applicable to the present and altered state of things.

The Irish Union annihilated the British Parliament, as the Scotch Union had annihilated the English Parliament.

From the Irish Union a new legislative body arose—English and Scotch members became entitled to legislate for Ireland; Irish members became entitled to legislate for England and Scotland. All the business relative to England and Scotland might be transacted in the present House of Commons by Irish members alone.

The present Parliament, the Parliament of the United Kingdom of Great Britain and Ireland—a title too long to be repeated—is not bound by any act to regulate the English Parliament.

The 30th of Charles II. was effectual to bind the English Parliament—it did not bind the British Parliament—it does not bind the United Kingdom Parliament. The 30th of Charles II. was at one time applicable to the member for Middlesex: it is, and always was, totally inapplicable to the member for Clare. All these allegations are equally true of the 1st of William and Mary.

So the 22d article of the Scotch Union bound the British Parliament—it does not bind the United Kingdom Parliament. The 22d article of the Scotch Union was at one

time applicable to the member for Midlothian—it is, and always was totally inapplicable to the member for Clare.

This brings us to the period of the Irish Union: until we arrive at that Union there is nothing to require "the member for Clare" to take any oaths in any place in England. By the common law no oaths are necessary to enable a member to sit and vote in the House of Commons, and none could possibly have been required by the common law, inconsistent with the Catholic religion, which was the religion of those who framed or adopted the common law.

By the common law the House of Commons had no power to administer an oath. The House of Commons could not, and cannot, by any act of its own, arrogate to itself an authority to administer an oath.

Thus the ground is completely cleared to the period of the Irish Union. First, the common law required no oaths to be taken within or without the House. Secondly, the House had no common law authority to administer an oath. Thirdly, all the statutes which were passed in England or Great Britain prior to the Irish Union, relative to the English or British Parliament, are of themselves totally inapplicable to the United Kingdom Parliament.

The entire case against me must turn, therefore, on some positive enactment in the Irish Union statute, or in some statute of the United Kingdom Parliament. I assert positively that there is nothing in the Irish Union statute, or in any subsequent statute, which inflicts any species of penalty, disability, or forfeiture whatsoever, on any member of the House of Commons for refusing or neglecting to take the obnoxious oaths.

This is my case. The penalties and disabilities for not taking the obnoxious oaths were enacted first by statutes, which bound the English Parliament; and secondly, by a statute which bound the British Parliament. There is no such statute binding the United Kingdom Parliament. None.

Here allow me to request, that gentlemen who are pleased to read this letter with attention, will pause for one moment and call to distinct recollection what is the rule and the maxim of common sense and common law, relative to penal

statutes, and how strictly and rigidly such statutes must be construed.

The Irish Union Act does not create any penalty or disability for refusing to take these oaths—the only part of that act which relates to oaths is the fourth article. The fourth article of the Irish Union is that which corresponds with the 22d article of the Scotch Union. The provisions of that article are these:—

1st. It regulates the number of Irish Peers—namely, thirty-two, four spiritual and twenty-eight temporal.

2d. It regulates the number of the Irish members of the House of Commons.

3d. It regulates the rotation of spiritual Peers, and the creation and extinction of Irish Peerages.

4th. It regulates the qualification of Irish members.

5th. It regulates the time and manner of the meeting of the first Parliament of the United Kingdom, and the number to sit in that Parliament. And,

6thly. With respect to oaths, it contains nothing more than these words:—"That every member of the House of Commons shall, until the Parliament of the United Kingdom shall otherwise provide, take the oaths, and make and subscribe the declaration, and take and subscribe the oath now by law enjoined to be taken, made, and subscribed by the Lords and Commons of the Parliament of Great Britain."

That is all. A mere temporary direction to take the oaths, without any species of sanction to enforce the taking of them.

For take notice, and mark it particularly, that no time is limited for taking the oaths,—no manner of taking these oaths is prescribed, pointed out, or alluded to,—no person or body is authorized to administer the oaths.

Time is left at large; at least to the extent of the entire Parliament. Manner is left at large to the utmost conceivable extent of all and every the modes of oath-taking.

No authority is given to any body to tender or call for these oaths; but above all, and before all, I may remark, and let it not for a moment escape your recollection, no penalty is mentioned or referred to—no disability is mentioned or referred to.

Recollect also, that no statute is recited, mentioned, or referred to, and not one word to creat any penalty or disability whatsoever—not one.

I need not, surely I need not, repeat, that penalties and disabilities are odious to our law, and that not one, even the meanest of the King's subjects, can incur any penalty or disability whatsoever, by or from any implication or conjecture, or mere constructive notion or otherwise, save by the express words of a positive and direct enactment.

To introduce penalties or disabilities in any other way, would be the most gross and palpable oppression—it would subvert the very first and most sacred principles of our judicial system.

I appeal to honour, candour, and truth to regulate the discussion of this important question, and to decide on its merits. This is a penal statute. Construe it strictly: that I am entitled to ask, and respectfully to require.

This is a penal statute: you cannot, the House of Commons cannot, add one word to it.

This is a penal statute: you cannot extend it by any implication.

This is a penal statute: if there be a doubt upon it, I am entitled to a favourable construction; but, indeed, there is no doubt, and I may well waive that point.

This is a penal statute: it uses only affirmative words, which, even in the most extensive sense, do not take away any common law right.

In fine, there is no penalty or disability enacted—there cannot possibly be any penalty or disability implied.

Even if penalty or disability could be implied, which every lawyer must deny, yet there is not any kind of necessity for any such implication—not the least.

I call upon you to observe these distinctions and differences between the 22d article of the Scotch Union, and the 4th article of the Irish Union.

First—The Scotch article referred to, and recited by titles and dates, the 30th Charles II., and 1st William and Mary. The Irish Union article does not refer to, or recite any one of them.

Second—The Scotch article directed the oaths to be taken at the time mentioned in those statutes. The Irish article does not say one word to regulate or to limit the time.

Third—The Scotch article directed the oaths to be taken in the manner contained in the acts to which it expressly refers. The Irish article does not say one word of the manner of taking the oaths.

Fourth—The Scotch article declared that the oaths should be taken upon the penalties mentioned in the statutes which it recited. The Irish article is totally silent as to penalties.

Fifth—The Scotch article declared that the oaths should be taken upon the disabilities mentioned in the statutes which it recited. The Irish article is totally silent as to disabilities.

With these marked and most important differences, is it possible that any person who will take the trouble to consider the subject, should arrive at this preposterous conclusion—"That the Scotch article and Irish article enact and mean the same thing?" And if that cannot be said, the question is at once decided in my favour.

It is indeed as clear as the sun at noon-day, that the statute law, since the Irish Union, stands thus:—"There is a statutory direction to every member of the House of Commons to take the oaths, but there is no time limited for taking them; there is no place appointed for taking them in; there is no tribunal appointed to administer them; there is no penalty for not taking them, there is no disability incurred by refusing to take them."

As there is no time limited by the statute law for taking the oaths, the House of Commons, if it were to require me to take them before I could sit or vote, would be guilty of a manifest injustice to me, and of an usurpation of legislative functions. It would make the vote of the House equivalent to an act of Parliament.

As there is no place or manner of taking the oaths prescribed by the statute, the House of Commons would be involved in a similar double guilt, if it were to dictate the manner of taking these oaths; besides, it could not, with-

out the most gross violation of the constitution, command me to take the oaths before the House itself. The House has no power to tender or administer these or any other oaths.

But the other two objections to the exercise by the House of Commons of an adverse summary decision in my case, are still more irresistible. The statute inflicts no penalty; the House of Commons cannot possibly create one. The statute inflicts no disability; the House of Commons cannot possibly create a disability.

I do not anticipate that my rights will be trampled on by the House of Commons, but, without intending offence, I may be permitted to say, that if they shall be so, then the rights not only of the people, but of the House of Lords, will be equally trampled upon; and it is not all these rights alone, but the prerogatives of the King will be equally trodden under foot. Because should I be excluded by a vote of the House of Commons, then, in my instance, the House of Commons will have usurped legislative authority, and by its simple vote will have enacted penalties and disabilities of the most grievous nature.

I am of course bound not to anticipate any such result, and to entertain the confident expectation, that as the Legislature has not enacted any penalty or disability for a refusal to take the oaths, so no one branch of that Legislature will assume the functions that belong exclusively to the entire, and create, by its vote, a disability of the most important nature.

It may, however, be alleged, that as the statute directs the oaths to be taken, it is a misdemeanour, and indictable, as such, to neglect taking them. To which I reply, that even if it were so, that is no reason why I should be excluded from sitting and voting in the House of Commons.

But, in truth, no indictment could be sustained against me, because, in the first place, the time for taking the oaths not being defined or limited by the statute, I have all the time I continue a member to take the oath before any indictment could be preferred. I must have ceased to be a member before any indictment can be framed, and even then the annual indemnity act would protect me.

But, in the second place, no particular manner of taking the oaths is pointed out by the Irish Union statute; and if the indictment were for not taking the oaths within the House of Commons, the indictment would be liable to a demurrer, and could never be sustained in point of law. On the contrary, so far from any member in the House of Commons being indictable, since the Irish Union, for not taking the oaths at the table in the House, it may, perhaps, be said, that the officer who administers these oaths is not quite free from legal responsibility for doing so without any legal authority.

This, then, is the short history of the law respecting these oaths. None of these oaths were, or could have been, taken in the House of Commons until the 30th of Charles II. From that period until the Scotch Union, any member of the English House of Commons who refused or neglected to take these oaths, incurred, by positive statute, a disability to sit or vote in the English Legislature.

From the Scotch to the Irish Union, any member of the British House of Commons who refused or neglected to take these oaths in the House, incurred, by positive statute, a disability to sit or vote in the British House of Commons.

From the Irish Union to the present period, no member of the United Parliament incurs, by refusing or neglecting to take these oaths, any disability whatever; there being, since the Irish Union, no statute of force creating any disability on that account in any member of Parliament.

I conclude my observations on this point by again imploring the members of the House of Commons to bear in mind, that penal and disabling statutes are to be construed strictly—that they cannot be extended by construction or implication—that "words" cannot be added to them—that doubtful words in them are to be construed favourably,—and that no affirmative words take away a vested right. I desire and expect to get the benefit of the law.

I should here close this letter if I had not been informed by a gentleman of much respectability, that some influential persons in the House, in discussing the questions respecting

my rights, had distinctly admitted, and I believe the Speaker himself was present at the time, that my right to sit and vote was quite clear upon the Irish Union Act, and could not be disputed, if there had not been a subsequent statute on the subject.

That statute was said to be the 41st Geo. III. cap. 52, and the section alleged to be applied to my case is the second section.

I deem it to be of the easiest imaginable proof to demonstrate that the 41st Geo. III. cap. 52, does not, and cannot, affect this question.

There is not one word in this statute relative to oaths or declarations—not one word. It is expressly an act to carry into effect another and a different part of the fourth section of the Irish Union Act. It is in its nature a penal and disabling act, to be construed by the rules already, perhaps, too often laid down.

The statute 41st Geo. III. cap. 52, does not touch this case at all—it relates to incapacities created by certain employments and offices, rendering the party incapable of being elected if the employments or offices were held prior to the election, and creating a forfeiture of the seat if they were obtained after the election. This is so plain to any man who reads the statute dispassionately, that it would be a waste of words to dilate on it.

But the matter will be put beyond a doubt by one simple view of the subject: it is this—attend to it, I pray. The second section enacts, "That all persons disabled from, or incapable of, being elected, or sitting and voting in the House of Commons of Ireland, should be disabled from, and incapable of, being elected or sitting and voting in the House of Commons of the Parliament of the United Kingdom."

You will remark at the first view of this clause, that the disability and incapacity to be elected can have nothing to do with a disability created after due election, by a refusal to take certain oaths.

This affords a clue to the right construction of the statute in that strict and limited sense in which it must, in point of

law, be construed. But I waive every thing else to come to a single, and you will see, conclusive point. It is this:—

Conceding, for the sake of argument, that the disability mentioned in this section is a disability created by a neglect to take the qualification oaths; then this comfortable conclusion inevitably follows,—that every single member from Ireland is disabled to sit or vote in the present Parliament. Because, before the Union, every member of the Irish House of Commons incurred a disability to speak or vote, and forfeited his seat, unless he took the oaths in the Irish House of Commons in the presence of the Irish Speaker, and of at least forty members sitting in the Irish House of Commons.

The taking the oaths alone would not do; the taking them in the presence of the Speaker of the English or of the British House of Commons would not suffice to prevent the member of the Irish House of Commons from incurring the disability and forfeiture of his seat.

An Irish member might have taken the oaths one hundred times before all the judges and magistrates in both countries: he might have taken them one hundred times before the Speaker of the British House of Commons, and in a full British Parliament. All was quite unavailing. He must have taken them in the presence of the Speaker of the Irish House of Commons in a full House, otherwise he was disabled to sit or vote.

If this section, therefore, applies to the oaths, then every Irish member must revive the Irish House of Commons, call up the Irish Speaker, and forty Irish Members, and take the oaths in their presence; otherwise he is inevitably disabled from sitting or voting in the Parliament of the United Kingdom.

See what a glaring absurdity would follow from construing the 41st of George III. to apply to the qualification. If that be so, every Irish member returned to the House of Commons since 1801, has been a stranger in the House without right to sit or vote!!!

I need not dwell on this topic. It proves, beyond a possibility of doubt, that the 41st George III. cap. 52, cannot

apply to this species of disability, and that the statute relates only to those incapacities which are personal to the individuals who come within their range, and render them ineligible if existing prior to election.

I also waive, for the present, the objection which has been powerfully urged to the validity of the statute of the 3d William and Mary, cap. 2d, as a law binding the Irish nation. I reserve to myself the power hereafter of insisting on that very powerful and interesting objection. I confine myself, for the present, to this,—that if every Irish member who was disabled to sit and vote in the Irish House of Commons be disabled to sit and vote in the present Parliament, then there is not one single Irish member capable of sitting and voting.

Not one of them could sit or vote in the Irish House, because not one of them has taken the oaths or made the declaration in a full House of the Irish Parliament, with the Speaker in the chair, according to the terms of the 3d William and Mary, cap. 2.

You must, therefore, totally disembarrass the case of the 41st George III. cap 52, and take it upon the Union Act.

The Union Act was one now admitted universally in Ireland to have been most pernicious to that country. It was intended by its framers to have been the harbinger of religious peace.

Mr. Pitt was quite sincere in his intention of consummating the measure by an equalization of civil rights to all his Majesty's subjects in Ireland. He framed the articles of the Union candidly and sincerely with that view, and to facilitate the future, and, as he thought, the then approaching definitive arrangements for the final adjudgment of Catholic emancipation. It seems clear that it was on this account he purposely omitted to enact any pains, penalties, disabilities, or forfeitures for omitting to take the obnoxious oaths.

This advantage we have gained by the Union, as a miserable consolation for the destitution of our national institutions, and the desolation of our country. Is this solitary advantage to be taken away from us, and the Union only to

be observed where it presses upon Catholic Ireland, and to be violated with impunity where it proves beneficial?

The law, and the intention of the framers of the law, are both with me. It is difficult, if not impossible, to imagine that Mr. Pitt and Lord Castlereagh could have accidentally omitted in the Irish Union Act all reference to penalties or disabilities. This accident would have been still more strange when it is recollected that the fourth article of the Irish Union is manifestly a transcript of the greater part of the 22d article of the Scotch Union. The latter must have been before the eyes of those who drew out the former. The inference of design and intention in the omission seems, therefore, irresistible.

I call upon you, respectfully and earnestly, to give your patient and deliberate attention to this subject. It requires an honest and an earnest attention from men who are not professional lawyers, to unravel the jargon of our statute law, and to get rid of the prejudices arising from preconceived opinion.

I am not at all surprised that such prejudice should exist, and that when first I asserted the right of a Catholic to sit and vote in Parliament, I should have been met by an almost universal disbelief. I acknowledge that I myself entertained similar prejudices until the events connected with the election for Clare compelled me to examine deliberately the statute-law in this respect, and enabled me to perceive, as others had done before me, that Mr. Pitt was perfectly sincere in the determination which he avowed, to consummate the Irish Union by admitting the Catholics to all the benefits of the British Constitution, and that he had prepared the articles of the Irish Union with perfect good faith to achieve our emancipation.

What a multitude of turmoils, dissensions, crimes, and miseries, would Ireland have escaped, and what an immense saving of expenditure, and increase of consumption of her manufactures, would have accrued to England for the last twenty-eight years, had Mr. Pitt been permitted to carry his plan into full execution, and to emancipate the Catholics of every rank and station, as he promised at the Union.

You will have perceived that my right to sit and vote in Parliament is established by this short summary:—

First—That there is nothing in the common law to take away or infringe on that right.

Second—That the statutes of 5th Elizabeth and 7th James, which required oaths of allegiance and supremacy to be taken in the Lord Steward's office, are, in that respect, repealed by the statute 1st William and Mary.

Third—That penalties and disabilities created by the statutes 30th Charles II., and 1st William and Mary, were applicable to the English Parliament only.

Fourth—That the penalties and disabilities in these statutes were expressly applied, and continued to be applicable to the British Parliament, by the 22d article of the union with Scotland.

Fifth—That none of the penalties or disabilities in these statutes were applied to, or continued for, the United Kingdom Parliament, by the fourth article of the Irish Union.

Sixth—That neither the time nor manner of taking the oaths in the English statutes is enacted by the Irish Union statutes, or is now any portion of the law of the United Kingdom Parliament.

Seventh—That the statute of the 41st of George III., cap. 52, does not and cannot apply to the oaths and declarations, because (amongst many other reasons), if it did so apply, it would now be utterly impossible for any Irish member to avoid being disabled to sit and vote.

I conclude this abstract with repeating this one indisputable maxim of constitutional law—that to create penalties or disabilities there must be a positive and express law. They cannot be created by conjecture, guess, or implication.

Recollect, gentlemen, that I incur a fearful responsibility if I take my seat under an erroneous opinion of right. I forfeit 500*l.* per day—I become an outlaw, incapable of holding any office of power or trust—of suing at law or in equity—of accepting any legacy or gift—of being executor or administrator, or of being guardian even to my own children.

With the number of malignant enemies which have been created for me by my career of honest, fearless, disinterested and indefatigable exertions in the sacred cause of liberty of conscience,—with such a host of enemies, I must be deeply impressed by the conviction that I am right in point of law, else I should be mad, or worse than mad, to run the risk of taking my seat.

If it be intended to try the question fairly, let an action be brought against me for a penalty of 500*l.* I will plead at once to issue either in law or in fact. The opinion of the Court of King's Bench, and, if desirable, of the House of Lords, can thus be had on the Irish Union Act; if, indeed, a serious doubt can exist on that subject in the mind of any lawyer, who knows that, without express enactment, penalties or disabilities cannot be created.

I have been fairly and freely elected and chosen by the freeholders of the county of Clare. No member of the House of Commons has, or indeed can have, a better title than I have, to insist on the validity of his election as a representative of the people. I am a representative of the Irish people calling for the observance of the treaty of the Union, and the benefit of the existing law.

There is, I know, enough of strength and of power to deprive me of the stipulations of the one, and the advantage of the other. But the eye of the nations of Europe and of the world is on this contest.

What do I contend for? It is to free Protestant and Catholic from the burden of abominable oaths. You swear that the Pope has not, and ought not, to have any spiritual authority in this country.

How can he swear so? That you should swear the Pope ought not to have spiritual authority in this realm, is quite consistent with your opinions.

You deny the right, and you swear to the denial of the right. But then you also deny the fact, and yet you know that the fact exists. The existence of the fact is as clear as the sun at noon-day—nay more. You make an annual grant of money to educate clergymen for the maintenance and support of that very spiritual authority which you, on your oaths, deny to exist at all.

We, the Catholics, have been most falsely calumniated when a disregard to the sacred obligations of an oath has been attributed to us.

We are, and have been, excluded from the full enjoyment of the constitution by no other means than by our conscientious respect for that sacred obligation. But may I be permitted to exclaim, great and good God! how inscrutable are thy judgments—how unsearchable are thy ways! Those who reproach the ancient religion of the land with disrespect to the sacredness of oaths, do themselves, every one of them, prelates, peers, and commoners, swear that a fact does not exist, which fact they not only behold before their eyes in full existence, but actually contribute to preserve and maintain!

I do not intend to retaliate by any reproach, but I am entitled to ask whether every conscientious Protestant will not rejoice if I shall be able to establish this—that it is totally unnecessary for members of Parliament to take this oath.

Whatever shall be the consequence of refusing to take this oath, I call on every conscientious Protestant to refuse to take it. In the name of that eternal God who shall judge us all, I adjure you not to trifle with the sacredness of his holy name, and not to attest it to the denial of the existence of that spiritual authority which is daily exercised over full one-third of all the subjects of this realm. I should deem my life well sacrificed to prevail on any one man to refuse to take such an oath as that.

The next oath which you take is that solemn declaration in the presence of God, that there is no transubstantiation, and that the sacrifice of the mass and the invocation of the saints, as now used in the Church of Rome, are impious and idolatrous!!!

Is there a single man in Parliament who would not feel relieved if he could avoid taking this oath? What, Sirs, to testify in the presence of God, that all the Catholics of England, Scotland, Ireland, France, Germany,—all His Majesty's emancipated Catholic subjects of Hanover,—all the Catholics of Italy, Spain, Russia, Greece, and the Americas, are idolaters. To swear this wholesale and in the lump, that we who would not for the world's worth, or for the world's

cruelest tortures, adore aught, save the Eternal and Living God?—Who (suppose the worst, but as I deny the truth to be) may be mistaken in the spot in which we place that Living and Eternal God, but who adore him, and him alone renouncing, detesting, and for ever anathematizing, any adoration of divine worship, save of Him, and of him alone. To swear that we are idolaters!!!

I will not pursue this topic, but let me, through you, conjure every conscientious Protestant who detests calumny, and respects the sanctity of oaths, to aid me in getting rid now and for ever of this species of unhallowed swearing.

I have heard that to take these oaths is one of the privileges of Parliament, and that the not taking of them is a breach of Parliamentary privilege for which a member might be expelled. What a notion of privilege! Privilege to swear what is not decorous even if it were true! Privilege to swear what is not—but hold, I must not finish the sentence.

There is one, and only one more observation, which calls for your attention. I acknowledge the spiritual authority of the Pope with as much distinctness as I deny and abjure any temporal or civil authority, direct or indirect, on his part. I believe with the certainty of faith in transubstantiation. I cherish in like manner the adorable sacrifice of the mass. I believe that the invocation of the blessed Mother of our Divine Redeemer, and of the other saints, as used in the Church of Rome, is a pious and very salutary practice. Well, believing all this, I have only to go to the table of the House, and, the Speaker being in the chair, and at least forty members attending, I have only totally and distinctly to deny all this upon my oath, and what follows? Why, that I shall be a foul perjurer—that of course; but this also follows—that from that moment all disability and incapacity ceases, and I am both a perjurer and a recognized member of the House of Commons of the United Kingdom of Great Britain and Ireland.

If any one thing stands in my way, that one thing is a refusal to commit perjury. Let me be punished by what has

been so often called the most enlightened assembly in the world, for not committing a perjury.

I have the honour to be,
With all due sentiments of respect,
Your most obedient servant,
DANIEL O'CONNELL,
Member for the county of Clare, in that part of the United Kingdom called Ireland.

To Edward Burtenshaw Sugden, Esq., one of His Majesty's Counsel, learned in the Law.

LETTER I.

"Would that mine enemy would write a book!"

Sir,—Your reputation at the Chancery bar is high; no man ranks before you in the estimation of that branch of the profession. You have earned that reputation, and won that rank, without any other patronage save what you obtained from your own talents and arguments.

Your fame in the forensic circles as an author is still more flattering. There are few works in the profession of which I should be so proud to be the writer as your first publication. There is a fearless independence in the revision of the opinions of great men; there is a manly assertion of principle over great authorities; there is a quantity of research that does credit to your diligence, and a clear distinctness of discrimination that does honour to your judgment. The combination of all these qualities in one book could be found only in the work of a man of a very superior order of intellect.

I do justice to your understanding—I am equally ready to do justice to your integrity. I cannot refuse you credit for habitual purity of political conduct. But it is not for

me to say how far those who have marked more minutely your career in politics will concur in the praise of that purity. It suffices for me to leave it altogether unquestioned.

There is one virtue which I know you to possess—it is that virtue which prohibits the absence of any of the propitious divinities—prudence. You have never felt yourself coerced to controvert the political views of the great or the powerful. You have never been opposed to "the givers of gifts." How singularly fortunate it must have been that you alone, of all the silken sages of the bar, should have discovered that undefined law which is to supersede the old common law of the land, and introduce into penal statutes a convenient extension by the mere force of equity. There shall be in future a Chancery side in our criminal law, and the learned Edward Sugden, Lord of Burtenshaw, shall be the first Vice-Chancellor. The innocent, who may escape the perils of indictment and jury, and the consequent danger of the rope and the axe, shall more certainly fall before the keen razor of the Rhadamanthus of criminal equity!

You, an equity lawyer, are in truth a mere volunteer in this controversy. A small portion of that modesty for which my countrymen are famed would have sufficed to guard you against the perils of adventuring on a branch of the law to which you must have been almost a total stranger. This rash step of yours might perhaps be called presumption by a person disposed to use harsh language; but if not presumptuous, it certainly was highly indiscreet on your part to accuse those who venture to differ from you, of ignorance.

In plain truth, Sir, this was exceedingly indiscreet on your part. It not only justifies, but requires me, in my own defence, to retaliate on you in terms which I should prefer not to use, and to accuse you, as I do now distinctly, of having exhibited gross ignorance—ignorance so gross as to be absolutely ludicrous.

I am bound to prove the truth of this charge, and the proof is perfectly easy.

You have composed, written, printed, and circulated a

pamphlet against my right to sit in Parliament. This was a deliberate act on your part,—as deliberate as it was uncalled for by any professional or personal duty. Had you succeeded in your labour, I am vain enough to think that the office of Master of the Rolls (and his Honour is, alas! in bad health) would not have been too great a reward for the sly David of Chancery who would have crushed the Irish giant of agitation. You, of course, did not dream of any such reward; but you have shewed a zeal worthy of any meed of recompense.

Now, mark my proof of your ignorance. Your pamphlet is entitled *Extracts from the Acts of Parliament relating to the Oaths to be taken by the Members of the Imperial Parliament.*

You wrote, you printed, you circulated this pamphlet in utter ignorance of the existence of the most important act amongst those statutes—the 1st of William and Mary, c. 1.!!!

This mistake—allow me to adopt a gentle word in the place of your more rough phraseology—this mistake is so very gross, it is so enormous, that it is scarcely credible that any lawyer could possibly commit it. Why, the *Joe Miller* story of the village performance of the tragedy of *Hamlet*, the part of *Hamlet* omitted by particular desire, is nothing to this omission of yours.

Yet in my native land, in the land of my fathers, I can attain neither rank nor station. I toil for life beyond the bar, whilst you!——but let my throbbing heart rest a while, and let me return to my volunteer assailant.

It is, I repeat, almost incredible that you should have made and written, and circulated such a blunder; but yet it must be believed--here is your pamphlet before me—"London, printed for the author." There it is, in the fourth page, the second in the work, you proceed to enumerate the statutes described in your title-page; you begin by referring to the 5th Elizabeth, c. 1, sec. 16, for the oath of supremacy; you next cite the 3 Jac. I. c. 4, and the 7 Jac. I. c. 6, for the oath of allegiance.

Let every lawyer in the House of Commons mark the

next step you take—I hope I shall be able to make it intelligible to every member of that House. Your next step is this—you proceed to cite the 1st William and Mary, c. 8, sec. 1, as repealing the oaths in the former acts, and substituting new oaths of supremacy and allegiance. You then refer to the fifth section, as requiring the new oaths to be taken in such manner, at such times, before such persons, and in such courts and places, as they should have been taken if the former oaths were still unrepealed.

You then sum up the law as being founded on those statutes. Your summing up is in these words:—"Thus the law stood before the union with Ireland, as regards the oaths of allegiance, and supremacy, and abjuration, which were directed to be taken by every member before he entered the House."

You yourself must now admit that the history of our law does not furnish an instance of such total and blundering inaccuracy as is contained in such your summary of the law.

For, in the first place, you totally omit the 1st William and Mary, c. 1, which is the only statute applicable to the matter in hand—an omission of the most strange and singular nature; and, in the next place, you have relied on the 1st William and Mary, c. 8, which is an act totally inapplicable to members of the House of Commons.

Your sin of commission is indeed a mighty one—your sin of omission is still greater.

How is it possible to account for your total omission of the 1st William and Mary, c. 1? Was it design? Of that I shall at once acquit you. It would argue a disposition so foreign from propriety to omit that statute designedly, that I hold you quite incapable of any such turpitude.

Was it omitted through ignorance? Come, Sir, you cannot deny it. Even the strange and futile attempt which you have made by a subsequent pamphlet—a species of postliminious preface to your former—to do away the force of the clear provisions of the 1st William and Mary, c. 1, proves beyond controversy, that if you had not been ignorant of the existence of that statute when you wrote, printed, and cir-

culated your first pamphlet, you would have deemed it necessary to canvass its provisions. It would, perhaps, be more suited to the courtesy with which I should desire to treat you, in despite of your most unnecessary, and certainly most ill-judged interference in this question,—it would, I say, be more suitable to suppose, that if you had been aware of the existence of the decisive act of the 1st William and Mary, c. 1, you either would not have written any pamphlet at all on this subject, or at all events you would have omitted that part of your work, by which you attempt to prove that the oath of supremacy must be taken by members of the Commons before they enter the House.

But, sacred Heaven, how could you have been ignorant of that statute? Why, it was not only a most important act in matter of law, but it was an historical document of the most signal interest and value in the constitutional and political history of this country. It was the statute which first enabled Presbyterians and Protestant Dissenters to sit in Parliament. It was in that respect a wise, salutary, and beneficent act of emancipation to a large class of most valuable subjects. The former statutes recited by you required an affirmative oath of supremacy, "that the King was supreme head of the church." No Protestant Dissenter could take that oath any more than a Catholic. The act 1st William and Mary, c. 1, repealed that oath, and substituted for it, with reference to members of Parliament, a negative oath—a mere denial that any foreign Prince or Prelate had spiritual authority in England, and thus flung open the doors of Parliament to Presbyterians and other Protestant Dissenters. How is it possible that you were ignorant of that act?

You, Sir, were ignorant of this act—of this all-important act,—you rush headlong into print, and decide a most important question with a *jejune* flippancy not to be exceeded even by this demonstration of your ignorance.

Thank Heaven you are not as yet a Judge! You have, before you ascend the steps of that tribunal (whatever it be) to which your professional reputation and Parliamentary propensities seem to destine you, time to reflect and to correct yourself. May this be the last occasion on which you shall take upon you to decide before you comprehend, and to infringe, by your unfounded judgment, upon a most valuable and almost sacred right—*O, non sic omnia ! ! !*

But I gladly turn from the contemplation of that part of the subject which presents you in so unfavourable a point of view, and I come to argue the question which is at issue between us. You assert as a result from the statute-law, that the oath of supremacy must be taken by every member of Parliament before he enters the House.

I draw the directly contrary inference, and assert with great confidence, that it is not necessary for any member of Parliament to take the oath of supremacy before he enters the House.

This was my first practical position in my letter to the members of the House of Commons—namely, that it is not now necessary to take the oath of supremacy in the Lord Steward's office or elsewhere, before entering into the body of the House.

Whether any such oath be necessary within the House itself, is another question; the negative of which I am quite prepared to maintain; but at present I confine myself to the preliminary inquiry.

I assert that it is not necessary to take the oath of supremacy before I enter the House. You assert that it is: the proof of the affirmative lies on you, and you accordingly proceed in your attempt to establish it.

Your case is this:—You, in the first place, cite the 5th Eliz. c. 1, and the 3 Jac. c. 3, and the 7th Jac. c. 6. These statutes, I admit, prove your case as far as they go. I concede that they provided, not by means of any implication or extension by equity, but in the only way in which they could do it—by positive and explicit enactment—that every member of the Commons should take the oath of supremacy in the Lord Steward's office before he should be permitted to enter the House.

This is express, and these statutes would at once decide the question against me, if they be still of force; but they are not. You, yourself, admit that they are not now of

force, nor have they been so since the revolution in 1688. There is an end, therefore, of your first proof. It consisted of statutes not now operative *proprio vigore*.

You then take up the second part of your case, and you assert that a subsequent statute substituted a different form of oath of supremacy for the members of the House of Commons, and required them to take such substituted oath in the Lord Steward's office before they should enter the House.

To prove this part of your case, on which the question hinges, you cite the 1st of William and Mary, c. 8, and in particular you rely on the 5th section of that act.

Of that act you allege these two things—first, that it prescribed a new oath of supremacy to be taken by members of the Commons; and, secondly, that the 5th section regulated the time, manner, and place of taking the new oath by such members, and so regulated them by a direct adoption in that respect of the former statutes.

I deny both these allegations. I first deny that the 1st of William and Mary, c. 8, enacts any thing relative to members of the House of Commons; secondly, I deny that the 5th section is at all applicable to such members.

Now, let that act be read patiently, and I think every candid lawyer will admit that it does not apply at all to members of the House of Commons.

First—It does not purport to apply to members of that House, nor are members of the Commons ever named in it, from the beginning to the end.

Secondly—There are in the act several enumerations of persons who are thereby directed to take these oaths, and as members of the Commons are not mentioned in it, the rule of law directly applies, ***expressio unius est exclusio alterius.***

Thirdly—Such enumeration includes persons of degrees much inferior to the members of Parliament, down to the local magistrates of boroughs and port towns. I assume you are aware of another rule of law, which decides that whenever any of the statutes particularly enumerates persons or things of inferior rank or quality, such act must

be construed to exclude persons or things of superior rank or quality. This rule completely excludes members of Parliament from the operation of the act in question.

Fourthly.—You are of course aware that all the acts of each session constitute but one statute, therefore the 8th chapter of the statute 1st William and Mary must be construed in conjunction with the 1st chapter of the same statute. Now that first chapter expressly abrogates the acts of the 5 Elizabeth, c. 1. 3 Jac. c. 4, and 7 Jac. c. 6, as far as they relate to the oaths of supremacy and allegiance to be taken by members of Parliament. It would therefore be absurd to the last degree of absurdity, to consider the 8th chapter of the statute as regulating by implication any matter relative to the former oaths of members of Parliament, when these oaths had been already abolished by the 1st chapter of the very same statute.

Fifthly.—The 5th section of the 8th chapter of the 3d William and Mary, which you have cited at length, is quite decisive against you—so decisive as to render your case quite hopeless. Because, while it certainly includes by express words in its enactment, all persons who were therefore bound to take the oath of supremacy, it as certainly excludes by proviso from such enactment, all such persons concerning whom other provision should be made in that act, or in any other act of that present session of Parliament. Now, provision was made on that behalf concerning members of Parliament by another act of the same session, namely, the first chapter. It follows, by the plainest logic, that the regulation which you rely on as to the time and manner of taking the oaths cannot possibly apply to members of Parliament.

Allow me to observe that, there being a reference in the 5th section to other acts of that session regulating these oaths, it is passing strange that, with the reference before your eyes, you should have omitted to make search for such acts. It was excessive neglect on your part not to make a search to which you were thus invited. Had your object been merely to afford an excuse to the "laymen" of the House of Commons for making in my case an unjust

and illegal decision, you would have omitted to search for acts of Parliament confirmatory of my right; but, as I take you to be totally incapable of any such motive, I confine myself to expressing again my astonishment at your miraculous neglect and oversight.

Let it now be once again observed, that you insist that the oath of supremacy must be taken by members of the House of Commons before they enter the House.

The abstract of your proof is this—that the statutes 5th Eliz. c. 1. 3 Jac. c. 4, and 7 Jac. c. 6, rendered it necessary to take that oath in the Lord Steward's office, before a member could be permitted to enter the House. Your next proof is the 1st William and Mary, c. 8, sec. 5, which, adopting the substituted oath of supremacy, required it to be taken by the same persons, in the same manner, at the same time and place, as the original oath of supremacy was required to be taken.

Such is the full abstract of your case. The abstract of my reply is this:—

1. I admit that the statutes of Elizabeth, and of James I. require each member of the Commons to take the oath of supremacy in the Lord Steward's office, before he enters the House. In this we are both agreed.

2. I assert that those statutes have been in this regard repealed. You admit this, and therefore on this second point we are both agreed.

3. I assert that this repeal was effected by the 1st chapter of the statute 1st William and Mary. You assert that it was effected by the eighth chapter of the same statute. Here we distinctly differ.

4. I assert that the act of the 1st William and Mary, cap. 1. directs members of Parliament to take the oaths within the House, and not elsewhere. You overlooked this act altogether in your first pamphlet, and in your second misrepresented it.

This is the very point in dispute. If it be true that it is the eighth chapter which has abrogated the former oath of supremacy to be taken by members of Parliament, and substituted a new oath for them; in that case I offer to admit that the 5th section does sufficiently revive the time and place of taking that oath, and consequently that you would be right in asserting that every member of the British Parliament was bound to take that oath before he entered the House.

But it is not true that it was the 8th chapter which did this or any of this; for, in the first place, the 8th chapter could not abrogate the former oaths for members of Parliament, simply because that was already done by the 1st chapter. In the second place, it was not the 8th chapter which substituted the new oath for such members, because that was already done by the 1st chapter. In the third place, the 5th section of the 8th chapter does not, and cannot possibly apply to members of Parliament, because it is expressly declared in that very section itself, that it does not apply to persons concerning whom any provision was made by any other act of that session. Now provision was actually made concerning members of Parliament by the first act of that very session.

Thus, Sir, it is perfectly plain that you totally fail in proving that the oath of supremacy should be taken by members before entering the House. The act of Parliament which you rely on totally fails you.

Thus, too, I have shewn that there is no act requiring the oaths of allegiance and supremacy to be taken by members of Parliament before they enter the House.

But my case is stronger still, because the 4th section of the 1st William and Mary, c. 1, expressly enacts that the substituted oaths of supremacy and allegiance shall be taken by the members of Parliament, together with the oaths and declarations in the 30th Charles II., and within the time, and in manner and form as prescribed by that act,—that is, in the House itself, the Speaker being in the chair; and there are these emphatic words—"and not at any other time or in any other manner."

Taking up the question at the Irish Union, the law stood thus,—there was not only no act requiring the oath of supremacy to be taken by a member before he entered the House, as you have asserted, but there was a positive act directing,

in express and most unequivocal words, that such oath should be taken within the House, the Speaker being in the chair, and not in any other manner whatsoever.

See how distinctly this statute bears out my original position in my letter to the members of the present House of Commons,—namely, " that I am entitled to go into the House and claim my seat, without taking any oaths inconsistent with the Catholic religion out of the House itself.

You, Sir, asserted the contrary, and your high professional character gave great weight to the assertion; but you were at that time totally ignorant of the existence of the act of Parliament which directed the oath of supremacy to be taken in the House, and not elsewhere.

I trust I am not inclined to be superstitious; but so many of those events which are often called lucky accidents, have occurred to forward the cause of Catholic liberty, founded as it is on the broad basis of freedom of conscience to all men,—so many of those events have lately taken place beyond human expectation, and without man's exertion,—that I am inclined, humbly, and with becoming diffidence, to hope that the superior arbiter of human destinies has fixed on this as the period at which the unconquered fidelity of the Catholic people of Ireland shall be rewarded by that equalization of civil rights with all other subjects, which the Irish Catholics were always ready to concede to, and contend for, on behalf of their oppressed Protestant fellow-Christians in every part of the globe.

Perhaps there is something of superstitious imagining in that idea; but it is quite clear that these two circumstances attend my assertion of right to sit and vote in Parliament, —first, that no one barrister in England or Ireland has ventured to give his name to the public in denial of my right, save one who treads the very footsteps of the Bench; and, secondly, that such one barrister has tarnished his professional reputation, and totally annihilated his claim for accuracy of research, by thrusting forward his most unsatisfactory and unfounded opinions in total and deplorable ignorance of the most important portion of the controversy.

This unfortunate exhibition which you have made of your temerity will, I trust, deter others from being tempted to be " in the like case offending."

There remain some other points in difference between us which I intend to make the subject of one or two other letters. For the present I content myself with having placed beyond any reasonable, or indeed intelligible cavil, my right to go into the body of the House without having taken any oath in the Lord Steward's office, or elsewhere out of the House, inconsistent with the Catholic religion.

Your second pamphlet proves nothing but this,—that the fatal blunder contained in the first having been discovered, you wish to cover the discredit of your mistake by a slight specimen of such palpable sophistry that I must not condescend to unravel it.

Before I conclude, let me call even upon you to smile at the senseless folly of some of our newspaper "legalists," who have, forsooth, found out that the usage of Parliament, an usage arising from statutes passed not one hundred and fifty years ago, can have the force of a law--and can enable the House to expel a member without the sanction of an act of Parliament. Most sapient critics these are to be sure—most sagacious and constitutional!!!

How I wish that you or any other lawyer would put his name to any opinion or assertion of that kind! But no lawyer, no rational man will do it; and yet unless the House of Commons collectively shall do in my case what not one individual would attempt to do alone, and upon the responsibility of his individual character,—and unless the House of Commons shall in my case trample on the law, outrage constitutional principle,—and unless that House shall give an usage of twenty-eight years the form of a statute; and, finally, unless the House of Commons shall violate the solemn treaty of the Union, my right to sit and vote in Parliament is to the full as valid as that of any other member whatsoever.

I am, Sir, with all due deference, your obedient servant,

Dover-street, Feb. 18. DANIEL O'CONNELL.

Valuable Works

PUBLISHING BY JAMES RIDGWAY,

And which may be had, by Order, of every Bookseller in the United Kingdom.

THE SPEECHES OF THE RIGHT HON. GEORGE CANNING, corrected by Himself; with a Memoir of his Life. By R. THERRY, Esq., of Gray's Inn, Barrister at Law; illustrated by a fine Portrait, Fac-similes of his hand-writing, a Plate exhibitive of his mode of correcting and revising his Speeches, &c., in two important passages from the celebrated one on Portugal: 6 vols. 8vo. £3 12*s*.

"A biographical memoir of the most illustrious statesman and accomplished orator of our age, prefixed to the only authentic edition of his Speeches, has far superior claims to notice and credit over any of those ephemeral and hurried sketches of his life, which, without authority, and for mere abject purposes of lucre, have been thickly palmed upon the public attention. * * * It embraces the essence and substance of all the truth that (except it should be through the affectionate and venerating zeal of personal friends or kindred) will, probably, ever be told of the life of George Canning."—*Monthly Review*.

"We recommend this edition of Mr. Canning's brilliant, splendid, and statesmanlike Speeches, as the noblest literary memorial that can be preserved of him."—*Literary Gazette*.

"This excellent and valuable edition of Mr. Canning's Speeches, by Mr. Therry, contains, among other things, a remarkable instance of the application of the new process of typolithography. There is, in the first volume, a fac-simile of the proofs of the celebrated Speech on the affairs of Portugal, with all the corrections made by Mr. Canning. Every mark which he made in the letter-press, every reference, and every word written on the margin, is represented as it appeared in his hand-writing in the proofs."—*Times*.

THE SPEECHES OF THE HON. THOMAS (afterwards LORD) ERSKINE, when at the Bar, on Subjects connected with the Liberty of the Press, and against constructive Treason: 5 vols. 8vo. £2 10*s*.

"These Speeches, stored as they are with the soundest political doctrines, the first moral sentiments, and the purest oratorical beauties, are calculated eminently to enlighten, and permanently to please—they are qualified to make men not only wiser, but better—to expand their views, to study their principles, and to ameliorate their hearts—to teach them to pursue the dictates of duty at every pain and peril, and to uphold the interests of humanity in every sphere and season."—*Morning Chronicle*.

"We take the opinion of the country, and of every part of the world where the language is understood, to be that of the most unbounded admiration of these exquisite specimens of judicial oratory, and of great obligations to the Editor of the collections."—*Edin. Rev.* Vol. xix.

THE SPEECHES OF SIR SAMUEL ROMILLY in the House of Commons, with Memoirs of his Life. By WILLIAM PETER, Esq., Barrister; illustrated by a fine Portrait by REYNOLDS, after Sir T. LAWRENCE: 2 vols. 26*s*.

THE SPEECHES OF THE RIGHT HON. CHARLES JAMES FOX in the House of Commons, with a correct Portrait by OPIE: 6 vols. £4 8*s*.

Fourth Edition, in 8vo. price 16s.

A SELECTION from the PUBLIC and PRIVATE CORRESPONDENCE of VICE-ADMIRAL LORD COLLINGWOOD: interspersed with Memoirs of his Life. By G. L. NEWNHAM COLLINGWOOD, Esq., F.R.S. Illustrated by a fine Portrait, a Plan of the Battle of Trafalgar, &c. &c.

"We have been more highly gratified and instructed than we could possibly have expected by the perusal of the history and letters of this noble and gallant officer, whose name, except on one memorable occasion, has never attracted a prominent share of notice among those which belonged to the public characters of his day; and yet his services were of the most important nature, and most ably conducted, at a crisis too big with danger, not to England alone, but to all civilised Europe; but the field of action in which he was chiefly engaged, though extensive, was at a distance from home. * * *. We once more thank the Editor for his highly important and very valuable work. It is one which will occupy a permanent place in the English Library. * * * The portrait of one English worthy more is now secured to posterity."—*Quarterly Review*, No. 74.

"We do not know when we have met with so delightful a book as this, or one with which we are so well pleased with ourselves for being delighted. Its attraction consists almost entirely in its moral beauty; and it has the rare merit of filling us with the deepest admiration for heroism, without suborning our judgments into any approbation of the vices and weaknesses with which poor mortal heroism is so often accompanied."—*Edinburgh Review*, No. 94.

Second Edition, in foolscap 8vo. price 9s.

The LIFE and REMAINS of WILMOT WARWICK. Edited by his Friend, HENRY VERNON.

Contents: Introduction—Life of Wilmot Warwick—Remains—The Odd Gentleman—Christmas Night—The Haunted Mill—The Dead Arm and Ghost of Cæsar—The Odd Gentleman and Old Maid—Twelfth Day—The Smuggler—The Poacher—The Wig—Travelling Companions—Henry Halworth—St. Valentine's Day—Gordon—The Painter's Account of Himself.

"The tales that follow the Life of Wilmot Warwick are fourteen in number, and are all very well told. We have been particularly pleased with the introductory one, which makes known the writer, and some of the most picturesque, if we may use the term, personages that exhibit in the little volume. It is entitled the 'ODD GENTLEMAN;' but though we recommend the perusal of the whole book to our readers, yet we cannot deny ourselves the pleasure of personally introducing to their notice our facetious friend. * * * Each tale is good in itself; but were we to express a preference, it would be in favour of 'CHRISTMAS NIGHT,' 'HENRY HALWORTH,' and 'The PAINTER'S ACCOUNT OF HIMSELF.' Let, however, every one read and decide for himself. Of this we are quite sure, that whoever does peruse this little work will rise refreshed from it, and will esteem the tone of tender, generous, and manly feeling, that pervades the whole of it."* * *—*New Monthly Magazine for December*.

"* * * In fact it is a novel, and a novel of a very superior order. It consists of a series of tales, picked up among, and written from incidents during an excursion into the country. * * * His tales are cleverly written, are aptly chosen, and possess many gems of sentiment. The 'HAUNTED MILL,' and the 'SMUGGLER,' are of a very powerful description, particularly the latter. The 'WIG' is the most lengthy; and for a portraiture of its own peculiar feelings, is one of the most accurate delineations we ever perused."* * *—*Gentleman's Magazine for December.*

A Second Volume of the REMAINS of WILMOT WARWICK is preparing for the Press, and will be published as speedily as possible.

With a Map and Vignette, price 3*s.*

A GEOGRAPHICAL and HISTORICAL ACCOUNT of the GREAT WORLD: with a Voyage to its several Islands, and a Vocabulary of the Language.

"C'est moi qui ai introduit dans le monde le luxe, la débauche, les jeux de hazard. Je suis l'inventeur de la danse, de la musique, de la comédie, et de toutes les modes nouvelles de France."

A HISTORY of the PENAL LAWS against the IRISH CATHOLICS, from the Year 1689 to the Union. By Sir HENRY PARNELL, Bart. M. P. Fifth Edition, 8vo. 3*s.* 6*d.* boards.

PAPER MONEY, BANKING, AND OVERTRADING; including those parts of the Evidence taken before the Committee of the House of Commons, which explain the Scotch System of Banking. By Sir HENRY PARNELL, Bart. M. P. Second Edition. 8vo. 5*s.* 6*d.*

THE SCOTCH BANKER. 8vo. 5*s.* 6*d.*

Contents: Lord Goderich, and the Country Bankers. The Prices of Wheat, and the Metallic Currency. Things as they are. A few facts. Things as they might have been. Famine. Scotch and English Bankers. Anticipation of the late Panic. Anticipation of the New Bank Restriction Act.

VIEWS ON THE CURRENCY; in which the nature of our System of Currency is explained; the Merits of the Corn Bill, Branch Banks, Extension of the Bank Charter, and the Small Note Act, are examined. By T. JOPLIN. 8vo. 5*s.* 6*d.*

A DISCOUSE on the POOR LAWS of ENGLAND and SCOTLAND, on the POOR of IRELAND, and on EMIGRATION. By G. STRICKLAND, Esq. 3*s.* 6*d.*

Contents.—Introduction. Importance of the Subject. Evidence. Plans for the Repeal of the Poor Laws of England. Origin of the Poor Laws. Causes of their present State. Forty-third of Elizabeth, Chap. 1; Vagrancy. Effects of the Poor Laws in England. Delays in improving them. Bill brought into Parliament in June 1827. Marriage of Paupers. Poor Laws of Scotland. Irish Labourers. Emigration. Poor of Ireland. Amount of Poor Rates in England and Wales. Appeals. Poor Rates in the Northern Counties. General View of the Poor Laws. Conclusion.

THE SUBALTERN'S LOG-BOOK, including ANECDOTES of well-known MILITARY CHARACTERS; Incidents on Voyages to and from India, with a Narrative of Occurrences whilst resident in that Country. 2 vols. post 8vo. 20*s.*

Gunnell and Shearman, Salisbury Square.